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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MALACHI OLAJUWON SMITH,

Defendant.

Case No.: 2:20-mj-00252-EJY

**STIPULATION TO CONTINUE
PRELIMINARY HEARING**
(First Request)

IT IS HEREBY STIPULATED AND AGREED by and between, NICHOLAS A. TRUTANICH, United States Attorney, District of Nevada, JENNIFER OXLEY, Assistant United States Attorney, representing the United States of America, and ANDREW WONG, Assistant Federal Public Defender, representing Defendant Malachi Olajuwon Smith, that the preliminary hearing in the above captioned case, which is currently scheduled for April 27, 2020, at 4:00 pm, be continued for at least 30 days.

This Stipulation is entered into in light of the ongoing health emergency associated with the COVID-19 pandemic and required for the following reasons:

1 1. On March 16, 2020, the Chief Judge of the U.S. District Court for the District of
2 Nevada issued Temporary General Order 2020-03, which found that due to the outbreak of the
3 coronavirus disease 2019 (“COVID-19”) in the District of Nevada, the declaration by the Governor
4 of the State of Nevada of a public health emergency due to the spread of COVID-19 in Nevada, and
5 the declaration of local emergencies by local governments due to COVID-19, including Clark
6 County, the Court has sustained “reduced ability to obtain an adequate spectrum of jurors,” and it
7 noted the effects of public health recommendations, including “social distancing measures.”
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9 2. On March 19, 2020, the Chief Judge of the U.S. District Court for the District of
10 Nevada issued Temporary General Order 2020-04, which noted that “the COVID-19 pandemic has
11 continued to spread,” resulting in the need for “more aggressive social-distancing measures.” The
12 Court noted further that, “[o]n March 17, 2020, the Governor of the State of Nevada ordered the
13 closure of many business establishments and strongly encouraged all citizens to stay home.”
14 Accordingly, the Court ordered the temporary closure of the Clerk’s office, and implemented other
15 changes, including “striving to eliminate in-person court appearances.” In the event any hearing
16 must go forward, the Court will conduct the hearing via video or teleconference. The Court will
17 vacate or amend GO 2020-04 no later than April 30, 2020.
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20 3. Further, on March 30, 2020, the chief Judge of the U.S. District Court for the District
21 of Nevada issued Temporary General Order 2020-05, which, pursuant to Section 15002 of the
22 Coronavirus Aid, Relief, and Economic Securities Act (“CARES Act”), authorized the “use of
23 video and telephone conferencing, under certain circumstances and with the consent of the
24 defendant, for various criminal hearings during the course of the COVID-19 emergency.”
25 Preliminary hearings conducted under Rule 5.1 of the Federal Rules of Criminal Procedure are
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1 included in the list of criminal matters for which the CARES Act authorizes the use of video and
2 telephone conferencing.

3 4. The Parties wish to avoid conducting a preliminary hearing in this case via video or
4 telephone conferencing.

5 5. Accordingly, based on the public health emergency brought about by the COVID-19
6 pandemic, and the required social-distancing measures as recognized in the General Orders, the
7 parties agree to continue the currently scheduled preliminary hearing from April 17, 2020 at 4:00
8 pm for at least 30 days.

9 6. Federal Rule of Criminal Procedure 5.1(d) provides that a magistrate judge may
10 extend the time limits in Rule 5.1(c) with the defendant's consent and upon a showing of good cause
11 taking into account the public interest in the prompt disposition of criminal cases. Because of the
12 COVID-19 pandemic, and the resulting various closures and resource limitations, good cause exists
13 to allow the defense more time to prepare for the preliminary hearing.

14 7. The time from March 27, 2020 through April 24, 2020 will be excludable under the
15 Speedy Trial Act, Title 18, United States Code, Section 3161(h)(7)(A), which provides that the
16 Court may exclude time arising from a continuance upon finding that the ends of justice served by
17 granting the continuance outweigh the best interests of the defendant and the public in a speedy
18 trial.

19 8. This continuance is not sought for purposes of delay, but to account for the necessary
20 social-distancing in light of the COVID-2019 public health emergency.

21 9. The defendant is not incarcerated and does not object to the continuance.

22 10. This is the first request for a continuance of the preliminary hearing in this case.

1 11. Denial of this request could result in a miscarriage of justice, and the ends of justice
2 served by granting this request outweigh the best interest of the public and the defendant in a speedy
3 trial.

4 12. The additional time requested by this stipulation is excludable in computing the time
5 within which the indictment must be filed pursuant to the Speedy Trial Act, Title 18, United States
6 Code, Section 3161(b), and considering the factors under Title 18, United States Code, Section
7 3161(h)(7)(A) and (B)(i) and (iv).
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10 DATED this 22nd day of April 2020.

11 NICHOLAS A. TRUTANICH
12 United States Attorney

13 /s/ Jennifer J. Oxley
14 JENNIFER J. OXLEY
15 Assistant United States Attorney

/s/ Andrew Wong
ANDREW WONG
Assistant Federal Public Defender
Counsel for Defendant

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

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Defendant.

Case No.: 2:20-mj-00252-EJY

~~Proposed~~ Findings and Order on Stipulation

Based on the pending Stipulation between the defense and the government, and good cause appearing therefore, the Court hereby finds that:

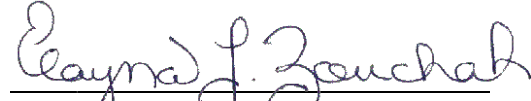
1. To account for the necessary social-distancing in light of the COVID-19 public health emergency and with the defendant's consent, the preliminary hearing in this case should be continued for good cause.
2. The parties agree to this continuance.
3. The defendant is not incarcerated and does not object to the continuance.
4. This continuance is not sought for the purposes of delay.
5. The additional time requested by this stipulation is excludable in computing the time within which the indictment must be filed pursuant to the Speedy Trial Act, Title 18, United States Code, Section 3161(b) and considering the factors under Title 18, United States Code, Section 3161(h)(7)(A) and (B)(i) and (iv).

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1 THEREFORE, IT IS HEREBY ORDERED that the preliminary hearing in the above-
2 captioned matter currently scheduled for April 27, 2020 at 4:00 pm, be vacated and continued until
3 May 27, 2020 at 4:00 p.m., in Courtroom 3B.

4 DATED this 22nd day of April 2020.

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7 HON. ELAYNA J. YOUCHAH
8 United States Magistrate Judge
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